

DECISION



THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D. C. 20548

60483

FILE: B-184221

DATE: February 6, 1976

MATTER OF: J. & H. Smith Mfg. Co., Inc.

099246
99352
99140

DIGEST:

1. Bid not containing prices for first article subitems is nonresponsive in view of invitation requirement making award conditional upon prices being submitted on all items being procured and fact that item quantity and unit price spaces were marked as "not applicable" is not controlling since each subitem was treated as "1 lot" instead of consisting of various items and "total item amount" was left blank for price insertion. To permit bidder to argue that these prices were included in price of antennas being procured, where no indication exists in bid to show such intent, allows bidder option of accepting award or declining to accept award on basis that it failed to bid on first article subitems.
2. Allegation that pricing provisions in IFB are ambiguous is untimely raised but considered because of partial interrelationship with other issues.
3. Even if bidder may be considered as sole bidder, its nonresponsive bid may not be made responsive so as to permit award.

Invitation for bids No. DAAB07-75-B-0177 was issued by the United States Army Electronics Command, Fort Monmouth, for the procurement of 8870 antennas and of first articles. Three bids were received. The low bidder alleged a mistake in bid and was permitted to withdraw its bid. The next low bid, that of the J. & H. Smith Mfg. Co., Inc. (J & H), was determined to be nonresponsive. J & H protests this determination.

Section D (Evaluation Factors for Award) of the invitation, specifically subsection 32, provided that:

"A bidder/offeror must quote on all items in this solicitation to be eligible for award. All items will be awarded only as a unit. Evaluation of bids/offers will be based, among other factors, upon the total price quoted for all items."

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Subsection 83 of invitation section C also provided:

"Enter prices for all items for which space has been provided in the Unit Price and/or Amount block, Section E, SMUAP Form 69E. If an item is offered at no charge, enter 'N/C.' DO NOT LEAVE BLANK. Failure to follow this instruction will render the bid nonresponsive."

J & H did not submit a "TOTAL ITEM AMOUNT*," or any other price, on first article subitem Nos. 0003AA, 0003AB, and 0003AC. The only prices submitted by J & H were a unit and a total price for the 8870 antennas. No "total" price for the antennas and the first articles was set forth in the J & H bid. In view of these facts, the contracting officer determined J & H's bid to be non-responsive due to J & H's failure to comply with the pricing requirements. It was further determined that because J & H's failure to submit the subitem prices impacted on the total bid price, that failure was more than a mere correctable "technical error" as defined by paragraph 2-406.3 of the Armed Services Procurement Regulation (ASPR) (1974 ed.).

As regards the subitems for which J & H inserted no prices in the blocks designated "TOTAL ITEM AMOUNT*," or otherwise for that matter, because each subitem was set forth in the invitation identically as regards quantity and price, we quote below only subitem No. 0003AA to show how these subitems were solicited.

ITEM NO. 0003AA	QUANTITY * N	PURCH UNIT []	UNIT PRICE N	TOTAL ITEM AMOUNT * []
ACRN []	FED STOCK NUMBER N Services		PART NUMBER []	ITEM/TEOJ []
POA []	QUANTITY VARIANCE OVER [] UNDER []		NOUN FIRST ARTICLE	SVC/AGENCY USE ONLY []
S I I E ACP []			CIRR []	

DESCRIPTIVE DATA:

First Article Testing in accordance with DD Form 1423 Exhibit B.
To include the cost of fabrication of First Article Test Units.

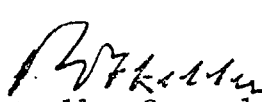
* * * * *

The letter "N" was footnoted as meaning "NOT APPLICABLE."

Nothing in the invitation expressly stated that first article costs should or could be included in the antenna prices. J & H did not indicate in its bid that it was so including these costs. Subsection 83 of the invitation, quoted above, commanded that prices should be inserted for all items "* * * for which space has been provided in the Unit and/or Amount block * * *." (Emphasis supplied.) This provision, indeed, contrary to the J & H allegations, appears to contemplate that in some instances unit prices might not be required although a total amount price would be required. Further, all spaces in section E which dealt with unit or total prices were marked with the letter "N" (Not applicable) except for the unit and total price spaces provided for the antennas and the total price spaces provided for subitem Nos. 0003AA, 0003AB, and 0003AC. It would seem strange, especially (and contrary to counsel's belief) as none of the item No. 0003 price spaces were left blank (all were marked with an "N"), that where no "N" was inserted for the subitem total prices one would--or could indeed--presume that the insertion of prices was unnecessary. Regarding the fact that four first article items were required by the invitation, this fact does not seem to us to preclude the procurement activity from treating the actual items as one first article entity. Indeed, that the activity treated them so is indicated by the sentence--"To include the cost of fabrication of First Article Test Units." (emphasis supplied)--which was typewritten on the standard pricing form. Also, in the Supplies Schedule Data--Section H--the activity treated each of the subitems as, specifically, "1 LOT."

Since total prices for the subitems were clearly required, the J & H bid is nonresponsive. To permit a bidder the option after opening either to become eligible for award by alleging that first article costs were included in the basic item prices or to avoid award by alleging that these costs were not included would be contrary to sound procurement policies. 40 Comp. Gen. 432 (1961); B-177368, March 23, 1973. Further, although the low bidder was permitted to withdraw its bid and although the third and high bidder may have submitted an unreasonable price, even a sole bidder may not be allowed to make its originally nonresponsive bid responsive after bid opening. B-166482, May 5, 1969. As regards the allegation by counsel that the asterisk by the total price created a further ambiguity, we need only note that the same asterisk was placed by the total price for the antennas, and this fact seems in no way to have deterred J & H from inserting a total price for the antennas.

Accordingly, the protest is denied.


Deputy Comptroller General
of the United States